IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1925

GEORGE HARRISON, Trustee of WESTERN ROPE AND MANUFACTURING COMPANY, Bankrupt,
Petitioner,
vs.
ANNA B. CHAMBERLAIN,
Respondent.

No. 6[redacted]1

Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

PHILIP KATES,
SAMUEL A. MITCHELL,
Counsel for Petitioner.

Dr. Lentz Law Printing Co., 415 North Eighth Street. Central 6971.

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Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

NOTICE.

To H. B. Martin, Counsel for the Above Respondent:

Please take notice that on Monday, the 6th day of October, A. D. 1924, at the opening of the court on said day, or as soon thereafter as counsel can be heard, the petitioner will submit a motion to the Supreme Court of the United States in its court room at the Capitol in Washington, D. C., upon a verified petition for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit in the

above-entitled cause in said petition and motion designated, a copy of which motion and petition for said writ of certiorari, with the brief in support thereof, are hereby delivered to you.

PHILIP KATES,
SAMUEL A. MITCHELL,
Counsel for Petitioner.

Receipt of copies of the foregoing notice, motion, petition for writ of certiorari, and brief in support thereof, is hereby acknowledged at Tulsa, Oklahoma, this the 26th day of August, 1924.

HENRY B. MARTIN,
Counsel for Respondent.

Tulsa, Okla.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

GEORGE HARRISON, Trustee of WESTERN ROPE AND MANUFACTURING COMPANY, Bankrupt, Petitioner, vs. ANNA B. CHAMBERLAIN, Respondent.	No.....

Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

MOTION.

Now comes George Harrison, Trustee in Bankruptcy of the Western Rope and Manufacturing Company, a corporation, bankrupt, by his counsel, and moves this Honorable Court that it shall, by certiorari or other proper process, directed to the Honorable, the Judges of the United States Circuit Court of Appeals of the Eighth Circuit, and require said Court to certify to this Court for its review and determination a certain cause in said Circuit Court of

Appeals lately pending, wherein the petitioner was appellee and the respondent was appellant, the same being No. 6403 on the docket of said Circuit Court of Appeals for the Eighth Circuit, and to that end the petitioner now tenders herewith its petition, together with a duly certified copy of the entire record of said cause in said Circuit Court of Appeals.

Dated Tulsa, Oklahoma, August 26, 1924.

PHILIP KATES,
SAMUEL A. MITCHELL,
Counsel for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

GEORGE HARRISON, Trustee of WESTERN ROPE AND MANUFACTURING COMPANY, Bankrupt,
Petitioner,

vs.

ANNA B. CHAMBERLAIN,
Respondent.

No.....

Certiorari to the Circuit Court of Appeals for the Eighth Circuit.

PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

George Harrison, Trustee in Bankruptcy of the Western Rope and Manufacturing Company, a corporation, bankrupt, hereinafter referred to as Petitioner,

hereby prays for a writ of certiorari to review the final judgment of the United States Circuit Court of Appeals for the Eighth Circuit in allowing an appeal and in entering an order directing the United States District Court for the Eastern District of Oklahoma to set aside an order directing Anna B. Chamberlain, the respondent herein, to turn over to this petitioner, as Trustee in Bankruptcy, $10,000.00 in currency in her possession, as an asset of the bankrupt estate.

The Western Rope and Manufacturing Company, a corporation under the laws of Oklahoma, was adjudicated a bankrupt by the United States District Court for the Eastern District of Oklahoma, sitting in bankruptcy, on May 25th, 1921, and on August 31, 1921, Anna B. Chamberlain, the respondent, and Agnes Gessel (sometimes herein called Agnes Leftwich), her daughter, were made parties to the bankruptcy proceedings on the ground that they held certain assets of the bankrupt.

On September 14, 1921, an examination of these witnesses was taken, and these examinations were held from time to time until October 28, 1921. Among other things, it was disclosed that in 1917 Agnes Leftwich had, with a check of the Western Rope and Cordage Company (found by the District Court to

have been the same as the bankrupt, a reorganization having taken place) payable to the Central National Bank in Tulsa, purchased a cashier's check of that bank for $9,500.00, payable to her mother, Anna B. Chamberlain, the respondent. The money was deposited to the joint account of Agnes Leftwich and Anna B. Chamberlain in the First National Bank at Broken Arrow, Okla., and with the money a farm was purchased on October 2nd, 1917, in the name of Anna B. Chamberlain, but on October 16th of the same year this farm was conveyed by Anna B. Chamberlain to her daughter, Agnes Leftwich.

On March 13th, 1920, both Agnes Leftwich and Anna B. Chamberlain conveyed the farm to one G. F. Hanks, and the proceeds of that sale, in currency, is admitted to be in the possession of the respondent, and is the fund that the trustee (the petitioner herein) seeks to recover.

The petitioner filed a petition on November 12th, 1921, for an order directing the respondent to deliver the money to him after the hearings at which the facts were disclosed (Tr., p. 6). The matter was referred to the Referee in Bankruptcy, as a Special Master, to examine the bankruptcy record and report to the Court his findings of fact and conclusions of law. The order of reference was subsequently en-

larged at the request of the respondent to permit the introduction of other testimony.

A response was filed (Tr., p. 10) and a reply to the response (Tr., p. 13).

The Master found the facts as above stated and also that the claim of Anna B. Chamberlain was not a real, but only a colorable claim, and was based on fraud; that the title to the fund had never passed from the bankrupt, and that it was an asset of the estate which should be turned over to the trustee (Tr., p. 16).

The District Court found the facts as reported by the Master on March 14, 1923, and ordered the money delivered to the trustee (Tr., p. 218).

The respondent then prosecuted to the Circuit Court of Appeals for the Eighth Circuit an appeal and a petition to review. The petition to review was dismissed but the appeal was allowed on March 14, 1923 (Tr., p. 218) and the District Court directed to set aside its order. The opinion of the Circuit Court of Appeals appears in the transcript of the record at page 234. The petition for a rehearing (Tr., p. 238) was filed and denied on July 9, 1924.

The opinion and decision of the Circuit Court of Appeals for the Eighth Circuit is to the effect that

a bankruptcy court, in determining whether or not it has jurisdiction of property by summary process, should examine only the claim, and, if in the law there is no adverseness shown, such jurisdiction attached; but if in law there is adverseness, however fraudulent or fictitious the claim may be, the summary jurisdiction is at an end.

Questions Presented.

The specific questions raised by this application are:

I.

May the Court determine its jurisdiction to issue a summary order by examination of the facts as disclosed at the hearing in the bankruptcy matter, or is its jurisdiction determined simply by the legal effect of the allegation of one asserting ownership? The Court of Appeals, in this case, has held that the bankruptcy court is without power to make an order for the delivery of the assets when it appears that an assertion of ownership is made, not colorable on its face, no matter how fraudulent or fictitious such claim may be in fact.

II.

Is the summary jurisdiction of a court of bankruptcy destroyed by the mere assertion of an adverse claim by one to property, which assertion is contrary to the facts?

Your Petitioner believes that if it appears from the bankruptcy record that the claim is fictitious, it is a colorable claim within the meaning of the bankruptcy law whatever may be the contents of the paper claim presented, and the Circuit Court of Appeals was wrong in refusing so to hold.

See

Muller v. Nugent, 184 U. S. 1;
In re Uttenbogard, 295 Fed. 778;
Levinson v. Greene, 296 Fed. 598.

The Petitioner believes that the claim asserted by the respondent, as shown by this record, is not, under the laws of the State of Oklahoma, good, even as against a demurrer.

See

Indian Land & Trust Co. v. Robt. L. Owen, 63 Okla. 127;
Stellwegon v. Clum, 254 U. S. 605.

The Petitioner presents herewith, in accordance with the rules and practice, the transcript of the

record in the said United States Circuit Court of Appeals for the Eighth Circuit, and appends to this petition a short brief on the questions here involved.

The Petitioner believes that the aforesaid decree and judgment of the Circuit Court of Appeals is erroneous, and that this Court should require the said cause to be certified to it for its review and determination in accordance with the provisions of the Act of Congress in such cases made and provided.

Wherefore, your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding said Court to certify and send to this Court on a day certain, to be there designated, a full and complete transcript of the record of all the proceedings of the Circuit Court of Appeals in said cause therein, entitled George Harrison, trustee of the Western Rope and Manufacturing Company, a corporation, bankrupt, vs. Anna B. Chamberlain, to the end that said cause may be reviewed and determined by this Court as provided in Judicial Code, Section 240, and that the petitioner may have such other and further relief in the premises as to this Court may seem proper and in conformity with said act, and that said judgment of said Circuit Court of

Appeals in the said cause and every part thereof may be reversed by this Honorable Court.

And your petitioner will ever pray.

Dated at Tulsa, Oklahoma, August 26, 1924.

GEORGE HARRISON,
Trustee in Bankruptcy of the Western Rope and Manufacturing Company, Bankrupt.

By PHILIP KATES,
SAMUEL A. MITCHELL,
Counsel for Petitioner.

State of Oklahoma, } ss.
County of Tulsa. }

Philip Kates, being duly sworn, deposes and says that he is one of the counsel for the petitioner herein, and that he prepared the foregoing petition, and that the allegations therein are true as he verily believes.

Philip Kates.

Subscribed and sworn to before me this 26th day of August, 1924.

(Seal) William R. Kerr,
Notary Public.

My commission expires Nov. 25, 1927.

I hereby certify that I have examined and read the foregoing petition for a writ of certiorari and that in my judgment such petition is well founded and should be granted by this Honorable Court, and that said petition is not filed for delay.

Philip Kates.